

## SUMMARY OF THE BASIS FOR DECISION

Name of Applicant  
Washington Suburban Sanitary Commission

Application Number  
11-NT-0366/201161493

Project Manager  
Lisa Dosmann/Imitaz Choudhry

Date of Decision  
May 7, 2012

The Environment Article, Annotated Code of Maryland and the Code of Maryland Regulations establish criteria for the Maryland Department of the Environment (Department or MDE) to consider when evaluating projects that propose to change the course, current or cross section of a nontidal stream or other body of water or to impact a nontidal wetland. If the criteria are satisfied, the Department may issue a permit for the proposed activity. The Department may deny a permit for a waterway construction activity that it believes is inadequate, wasteful, dangerous, impracticable or detrimental to the best public interest. The Department may not issue a nontidal wetland permit for a regulated activity unless it finds that the applicant has demonstrated that a regulated activity, which is not water-dependent, has no practicable alternative, will minimize alteration or impairment of the nontidal wetlands, and will not cause or contribute to a degradation of ground or surface waters.

In the case of the proposed extensive rehabilitation to the Washington Suburban Sanitary Commission's (WSSC) sewer infrastructure in Montgomery and Prince George's Counties the question for the Department to address is whether or not the proposed project impacts are acceptable under the regulations as they pertain to such construction activities. Permanent impacts include: 63,276 square feet (1.47 acre) of forested nontidal wetlands; 558 square feet of the nontidal forested vernal pool; 5,750 square feet (0.13 acres) of scrub-shrub nontidal wetlands; 10,303 square feet (0.24 acres) of the 25-foot forested nontidal wetlands buffer; and, 80,648 linear feet of stream. Temporary impacts include: 6,791,439 square feet (155.91 acre) of forested nontidal wetlands; 1,434,866 square feet (32.94 acre) of the 25-foot forested nontidal wetlands buffer; 31,434 linear feet of stream; and, 6,926,040 square feet (159.15 acres) of the 100-year floodplain.

### **PUBLIC NOTICE**

Adjoining property owners, local government officials and other interested persons must be notified of proposed impacts to nontidal wetlands and waterways. In addition, an opportunity to comment and request a public informational hearing must be provided via a local newspaper. The public notice on this application was published in The Washington Post, The Maryland Independent and The Sentinel on December 1, 2011. A public informational hearing was scheduled for January 5, 2012 and included in the public notice. Comments were received during the public notice period and the applicable comments are addressed in the "Alternatives Analysis" section. No members of the general public attended the January 5, 2012 public informational hearing.

## **PROJECT PURPOSE AND NEED**

In order for the Department to authorize impacts to nontidal wetlands and their regulated buffers, regulated activities must be determined to be necessary and unavoidable to meet the basic project purpose. It is also important to note that the orderly development and use of land is regulated through planning and zoning controls implemented by the local government. In this particular instance, Prince George's and Montgomery Counties make the decision about appropriate land use of the property. The project's purpose is to rehabilitate WSSC's aging sewer infrastructure, including manholes and pipe segments as well as stream stabilization projects. Approximately 2,700 manholes need to be accessed to accomplish these repairs that include approximately 358,000 linear feet of sewer relining throughout the WSSC district in Montgomery and Prince George's Counties. Specifically, repairs to manholes will include stream bank armoring, structural repairs, lining, and raising/replacing frames and covers. Repairs to sewer pipes will include stream armoring, lining, grouting, and internal/external point repairs. The project is divided into 24 sewer basins, and 22 projects that will reduce sanitary sewer overflows to waterways and improve water quality.

The project is necessary to comply with a Consent Decree that the WSSC entered into with the United States Environmental Protection Agency (USEPA), the Department, and citizen groups. The Consent Decree was developed with the purpose of reducing the total number of sanitary sewer overflow events as well as the total quantity of untreated wastewater discharged into Maryland's wetlands, streams, parklands, and environmentally sensitive areas (Source: Joint Federal/State Application for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland, Section 2a; dated 9/15/11).

## **ALTERNATIVES ANALYSIS**

For projects that are not water-dependent, the applicant must conduct an alternatives analysis to demonstrate that the project has no practicable alternative. The factors to be considered are whether the project purpose can be accomplished using one or more alternative sites in the general area; a reduction in the size, scope, configuration or density would result in less impact; the applicant made a good faith effort to accommodate the site constraints that caused the alternative sites to be rejected; and that the regulated activity is necessary for the project to meet a demonstrated public need. Due to the nature of the project; the rehabilitation of the existing aging sewer line, no practicable alternative exists. While alternative site selection is not possible for the rehabilitation of the sewer line the access paths were evaluated to avoid impacts to sensitive resources (Source: Joint Federal/State Application for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland; Section 6M, Alternative Site Analysis, dated and signed 9/23/11 by Mark Behe).

As stated in the "Public Notice" section, the Department received a few comments during the public notice period. Two of the comments received were related either to regulated resources or the Department's review. The first comment was in regards to the Broad Creed Force Main and how the work in regulated areas adjacent to private property would be rectified after the project is complete. WSSC addressed the comment in their restoration and stabilization plan for the

disturbed area required by Prince George's County (Source: letter to file dated 6/16/11). The site restoration and stabilization plan incorporates Best Management Practices for work in a nontidal wetland, which uses wetland seed mix in regulated areas to allow revegetation of natural wetland species (Source: full size plans dated 9/23/11). A second comment was received regarding the Department's timeframe for permitting the project. The Department addressed this comment directly to the commenter by explaining the review process and policies relating to permit decisions. (Source: email to file from Jonathon Stewart dated 2/28/12).

## **AVOIDANCE AND MINIMIZATION**

If the alternative site analysis is accepted, the applicant must demonstrate that adverse impacts to nontidal wetlands, their regulated buffers, and the 100-year frequency floodplain are necessary and unavoidable. Avoidance and minimization was implemented by using existing manholes, moving access paths to avoid nontidal wetlands and nontidal wetland buffers. Clearing in the easement will not require grubbing and the area will be allowed to re-vegetate after the project is complete. Also, some manholes that require rehabilitation will be accessed by utilizing smaller mechanized equipment that will reduce the limits of disturbance in those areas. For the Broad Creek Force Main the location is adjacent to existing right of way next to a well established gravel access road. Therefore, impacts are avoided and reduced by utilizing the existing access roads, using smaller equipment where appropriate and utilizing existing right of way (Source: Joint Federal/State for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland, Section 4 Q; Reduction of Impact, dated 9/ 9/11).

## **WATER QUALITY**

Erosion and sediment control measures and stormwater management practices are designed to prevent the degradation of ground and surface water quality. Sediment pollution is addressed under Maryland's Erosion and Sediment Control Act. The law mandates local Soil Conservation Districts to review and approve erosion and sediment control plans developed in accordance with State standards. The Department's programmatic responsibilities are limited to promulgating regulations, and developing standards, ordinances and other criteria necessary to administer an erosion and sediment control program, including program oversight and delegation of enforcement authority to local governments. As a result, the Montgomery County and Prince George's County Soil Conservation Districts are responsible for the review and approval of an erosion and sediment control plan for the proposed project.

Stormwater discharges are addressed under Maryland's Stormwater Management Act. The law requires counties and municipalities to "adopt ordinances necessary to implement a stormwater management program." The Department's programmatic responsibilities are limited to promulgating regulations defining the minimum features of a stormwater ordinance and program oversight. The Department also reviews the stormwater management program of the counties and municipalities and their field implementation and requires corrective action where a program is found deficient. For most projects, compliance with the County-issued stormwater management approval ensures that the project will not degrade water quality, but for projects

affecting Tier II waters, the Department will require a separate anti-degradation analysis. In this particular case, however, the Montgomery County and Prince George's County Soil Conservation Districts are responsible for the review and approval of the project's stormwater management plan.

During the application review process, the Department verifies that appropriate best management practices are incorporated into the sediment and erosion control plans and the stormwater management plans to protect the State's water resources. In order to insure that these practices are contained in the project's final design plans, the applicant will submit approved sediment and erosion control plans and stormwater management plans to the Department prior to the commencement of construction activities authorized by the Permit. The Applicant's approved plans incorporate the appropriate Best Management Practices and conditions for this project.

## **ENDANGERED SPECIES AND FOREST INTERIOR DWELLING SPECIES**

Maryland Department of Natural Resources (DNR) files indicate that there are properties of concern located within the study area boundaries identified in the permit. The project will involve working in streams that contain sensitive resources, including closure periods for work in streams that contain sensitive fish populations. It is clear that the sewer rehabilitation and stream stabilization projects will take place in areas that contain sensitive species and may impact sites that have not yet been identified. There is potential to impact sensitive resources, depending on the construction methods and location of the impact areas. Given the extensive nature of the current study area, DNR is unable to provide specific recommendations at this time. DNR will review the modifications as they are presented and address each sewer shed individually.

## **HISTORIC PRESERVATION**

Maryland Historic Trust (MHT) files indicate that there are hundreds of properties (including a number of archeological resources and MHT easements properties) located within the study area boundaries identified in the permit. These properties include National Register listed historic districts of Kensington, Garrett Park and Greenbelt, as well as His Lordship's Kindness, Harmony Hall, and the Oxon Cove Farm. It is clear that the sewer rehabilitation and stream stabilization projects will take place in areas that are archeologically sensitive and may impact sites that have not yet been identified. There is potential to impact cultural resources, depending on the construction methods and location of the impact areas. Given the extensive nature of the current study area, MHT is unable to provide specific recommendations at this time. When WSSC submits a modification request, WSSC will send a cultural resources consultant to the MHT library to conduct research into the historic properties located within the project area. As each modification is requested for the individual sewer sheds MHT will be notified and will provide appropriate comments and recommendations regarding the effects on historic properties (Source: letter to file from MHT, dated 11/3/11).

## MITIGATION

Mitigation is only a consideration in a permit decision after steps have been taken to avoid and minimize impacts to nontidal wetlands and their regulated buffers, and nontidal waterways, including the 100-year floodplain. The project proposes a total of 70,031 square feet permanent nontidal wetland impacts, with the Broad Creek Force Main impacts being a loss of 558 square feet nontidal forested vernal pool, vegetative conversion of 5,750 square feet scrub-shrub to emergent wetland, and vegetative conversion of 53,344 square feet forested nontidal wetlands to emergent wetlands.

For the Broad Creek Force Main, mitigation will be required at a 3:1 mitigation to impact ratio for the loss of the vernal pool and a 1:1 mitigation to impact ratio for the vegetative conversion impacts, resulting in 60,768 square feet of wetland mitigation required. As shown in the February 2012 Proposed Mitigation Map, the proposed mitigation will include reforestation of a WSSC property adjacent to Tridelphia Reservoir. Mitigation will include enhancing a 0.82 acre degraded emergent wetland through controlling invasive species and planting with woody species, and reforestation of 4 acres 50-foot wetland buffer and riparian area adjacent to the reservoir.

The Phase I Mitigation Plan received January 19, 2011, stated that the impacted nontidal wetlands provide the functions of wildlife habitat, water quality improvement, erosion control, stormwater/flood control, and passive recreation. Since the majority of losses are due to conversion, the impacted nontidal wetlands will still provide most of these functions. The proposed mitigation will also provide these same functions, and will provide important water quality benefits to the drinking water reservoir. As stated in the January 19, 2011 Phase I Mitigation Plan, the permittee was unable to conduct onsite mitigation since the narrow easements are not owned by WSSC and planting trees in these easements would not be compatible with pipe maintenance. According to a June 1, 2011 letter from Chesapeake Environmental Management, Inc., a mitigation site search was conducted within the impacted watershed, but did not result in any acceptable mitigation opportunities. In this letter, mitigation is described as "...upstream of the existing project area in an urban watershed that will enhance water quality in all watersheds located downstream". The wetland mitigation site will be protected in perpetuity through Deed of Restrictive Covenants.

The remaining 10,379 square feet of permanent wetland conversion for the overall project will also require mitigation. Since these estimated impacts are associated with proposed stream stabilization, finalized plans will need to be submitted for review and a modification issued prior to commencing these impacts. Specific mitigation requirements for these impacts will be specified in the issued modifications.

